IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.189 OF 2007
IN
WRIT PETITION NO.7112 OF 2003

ALONGWITH

CIVIL APPLICATION NO.319 OF 2007
AND
CIVIL APPLICATION NO.320 OF 2007
IN
LETTERS PATENT APPEAL NO.189 OF 2007
IN
WRIT PETITION NO.7112 OF 2003

Miss Yvonne Furtado .. Appellant
v/s.
The Presiding Officer,
2nd Labour Court, Bandra and another .. Respondents

Appellant present in person.
Mr. S.K. Talsania i/by M/s. Sanjay Udeshi & Co. for the respondent No.2.

CORAM : SWATANTER KUMAR, C.J. &
J.P. DEVADHAR, J.

DATED : 19TH NOVEMBER, 2007

P.C.

In the present appeal, the appellant has challenged the

legality and correctness of the order dated 4th August, 2007, passed by the learned Single Judge in Writ Petition No.7112 of 2003.

2. The appellant was working with the respondent No.2 Ceat Limited. Her services were terminated and therefore, she raised industrial dispute being I.D. No.548 of 1992. The learned Presiding Officer of the Labour Court at Mumbai recorded Part-I award and held that the enquiry was not fair and proper. While recording the said finding, the court found that proper opportunity was not given to the workman and she was also not permitted to take assistance of the lawyer despite her request.

3. We may notice here that one of the main issue raised by the appellant was that the chargesheet which was issued to her and which was the basis of the departmental enquiry was not issued by the competent authority. It is further contended that the dismissal order is also passed by a person who had no authority to pass such order. This contention was noticed by the Labour Court but was not answered in the order dated 23rd April, 2003. The Management, however, felt aggrieved and challenged the order of the Labour Court by way of writ petition

before this court which has resulted in passing of the impugned order dated 4th August, 2007.

4. The learned Single Judge found that the finding recorded by the Labour Court was not sustainable in law and by remanding the matter to the Labour Court, issued the following directions:

(i) Whether the person who has issued the chargesheet and the dismissal order was competent to do so?

(ii) Whether the enquiry held against the workman was fair and proper?

(iii) Whether the findings recorded by the enquiry officer are perverse?

5. The question of cost which was raised by the appellant before us was also referred and left in the discretion of the Labour Court. The appellant workman felt aggrieved by this order and filed the present appeal. The argument raised before us is that the points raised by the appellant were duly recorded by the Labour Court but no finding has been recorded thereon and the learned Single Judge ought to have recorded the finding on the issue rather than remanding the matter on the

question whether the chargesheet was issued by the competent authority or not.

6. Having heard the learned counsel for the respondents and the appellant who appeared in person, we are unable to find any error in the impugned order. It is well settled principle of Industrial jurisprudence that the Labour Court is the competent court to record the finding of facts as well as law. The finding of facts recorded by the Labour Court are normally not interfered by this court in exercise of writ jurisdiction. Thus, it would not be proper for this court to record the finding of facts and law in the first instance in exercise of the writ jurisdiction. The matter has correctly been remanded to the Labour Court and we, therefore, have no reason to defer with the directions contained in the order. However, we make it clear that the Labour Court shall decide the questions formulated by the learned Single Judge in para 7 of the order and question No.1 shall be answered at the first instance and without any further evidence being recorded. Needless to note that the Labour Court had already noticed this contention in its order dated 23rd April, 2003 but erred in law in not giving clear finding on that issue.

7. With the above direction, we dispose of this appeal by leaving the parties to bear their own costs.

CHIEF JUSTICE

J.P. DEVADHAR, J.